

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DIANE VON FURSTENBERG  
STUDIO, L.P.,

Plaintiff,

08 Civ. 866 (CM)(GWG)

**DEFENDANT KANDY KISS OF  
CALIFORNIA, INC.'S ANSWER  
TO FIRST AMENDED  
COMPLAINT**

**DEMAND FOR JURY**

-against-

TARGET BRANDS, INC., et al.,

Defendants.  
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**COMES NOW** defendant KANDY KISS OF CALIFORNIA, INC. (hereafter referred to as “Kandy Kiss” or “Defendant”) and answers for itself only Plaintiff Diane Von Furstenberg Studio, L.P.’s (hereafter referred to as “Plaintiff”) First Amended Complaint (hereafter referred to as the “Complaint”) on file herein, admitting, denying and alleging as follows:

1. In answering Paragraph 1 of the Complaint, Defendant lacks sufficient information or belief to admit or deny the allegations in the aforementioned paragraph and basing its response on such lack of information and belief, Defendant denies, generally and specifically, the allegations contained therein

2. In answering Paragraph 2 of the Complaint, Defendant lacks sufficient information or belief to admit or deny the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

3. In answering Paragraph 3 of the Complaint, Defendant lacks sufficient information or belief to admit or deny the allegations in the aforementioned paragraph and

basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

4. In answering Paragraph 4 of the Complaint, Defendant admits the allegation contained therein.

5. In answering Paragraph 5 of the Complaint, Defendant lacks sufficient information or belief to admit or deny the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

6. In answering Paragraph 6 of the Complaint, Defendant admits that Plaintiff claims to have bought this action pursuant to various statutes and New York common law, but denies that Plaintiff's claims have any merit.

7. In answering Paragraph 7 of the Complaint, Defendant admits the court has subject matter jurisdiction.

8. In answering Paragraph 8 of the Complaint, Defendant admits the court has personal jurisdiction over it

9. In answering Paragraph 9 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

10. In answering Paragraph 10 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

11. In answering Paragraph 11 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

12. In answering Paragraph 12 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

13. In answering Paragraph 13 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

14. In answering Paragraph 14 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

15. In answering Paragraph 15 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

16. In answering Paragraph 16 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

17. In answering Paragraph 17 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

18. In answering Paragraph 18 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and

basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

19. In answering Paragraph 19 of the Complaint, other than Exhibit A appears to be a copy of Certificate of Registration No. VAu704-973, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

20. In answering Paragraph 20 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

21. Paragraph 21 of the Complaint is a legal conclusion, and there are no allegations in the aforementioned paragraph to admit or deny.

22. In answering Paragraph 22 of the Complaint, other than Exhibit C appears to be a copy of Certificate of Registration No. VAu711-001, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

23. In answering Paragraph 23 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

24. In answering Paragraph 24 of the Complaint, Defendant denies each an every allegation set forth therein.

25. In answering Paragraph 25 of the Complaint, Defendant denies each an every allegation set forth therein.

26. In answering Paragraph 26 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

27. In answering Paragraph 27 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

28. In answering Paragraph 28 of the Complaint, Defendant denies each an every allegation set forth therein.

29. In answering Paragraph 29 of the Complaint, Defendant denies each an every allegation set forth therein.

30. In answering Paragraph 30 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

31. In answering Paragraph 31 of the Complaint, Defendant denies each an every allegation set forth therein.

32. In answering Paragraph 32 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

33. In answering Paragraph 33 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

34. In answering Paragraph 34 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

35. In answering Paragraph 35 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

36. In answering Paragraph 36 of the Complaint, Defendant denies each an every allegation set forth therein.

37. In answering Paragraph 37 of the Complaint, Defendant denies each an every allegation set forth therein.

38. Defendant incorporates the prior responses to Paragraphs 1 through 37 herein.

39. In answering Paragraph 39 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

40. In answering Paragraph 40 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

41. In answering Paragraph 41 of the Complaint, Defendant denies each an every allegation set forth therein.

42. In answering Paragraph 42 of the Complaint, Defendant denies each an every allegation set forth therein.

43. In answering Paragraph 43 of the Complaint, Defendant denies each and every allegation set forth therein.

44. In answering Paragraph 44 of the Complaint, Defendant denies each and every allegation set forth therein.

45. Defendant incorporates the prior responses to Paragraphs 1 through 44 herein.

46. In answering Paragraph 46 of the Complaint, Defendant lacks sufficient information or belief to admit or denies the allegations in the aforementioned paragraph and basing its response on such lacks of information and belief, Defendant denies, generally and specifically, the allegations contained therein.

47. In answering Paragraph 47 of the Complaint, Defendant denies each and every allegation set forth therein.

48. In answering Paragraph 48 of the Complaint, Defendant denies each and every allegation set forth therein.

49. In answering Paragraph 49 of the Complaint, Defendant denies each and every allegation set forth therein.

50. In answering Paragraph 50 of the Complaint, Defendant denies each and every allegation set forth therein.

51. In answering Paragraph 51 of the Complaint, Defendant denies each and every allegation set forth therein.

52. In answering Paragraph 52 of the Complaint, Defendant denies each and every allegation set forth therein.

53. Defendant incorporates the prior responses to Paragraphs 1 through 52 herein.

54. In answering Paragraph 54 of the Complaint, Defendant denies each and every allegation set forth therein.

55. In answering Paragraph 55 of the Complaint, Defendant denies each and every allegation set forth therein.

56. In answering Paragraph 56 of the Complaint, Defendant denies each and every allegation set forth therein.

57. In answering Paragraph 57 of the Complaint, Defendant denies each and every allegation set forth therein.

58. In answering Paragraph 58 of the Complaint, Defendant denies each and every allegation set forth therein.

59. Defendant incorporates the prior responses to Paragraphs 1 through 58 herein.

60. In answering Paragraph 60 of the Complaint, Defendant denies each and every allegation set forth therein.

61. In answering Paragraph 61 of the Complaint, Defendant denies each and every allegation set forth therein.

62. In answering Paragraph 62 of the Complaint, Defendant denies each and every allegation set forth therein.

63. In answering Paragraph 63 of the Complaint, Defendant denies each and every allegation set forth therein.

64. In answering Paragraph 64 of the Complaint, Defendant denies each and every allegation set forth therein.

65. In answering Paragraph 65 of the Complaint, Defendant denies each and every allegation set forth therein.

66. In answering Paragraph 66 of the Complaint, Defendant denies each and every allegation set forth therein.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

67. Complaint fails to state facts sufficient to constitute any claim for relief against this Defendant.

#### **SECOND AFFIRMATIVE DEFENSE**



68. Plaintiff's copyright and/or copyright registration are invalid.

THIRD AFFIRMATIVE DEFENSE

69. The alleged infringing work is not substantially similar to Plaintiff's Subject Design (as that term is defined in the Complaint).

FOURTH AFFIRMATIVE DEFENSE

70. If Defendant infringed any copyright interest allegedly held by Plaintiff, Defendant did so with innocent intent.

FIFTH AFFIRMATIVE DEFENSE

71. Plaintiff's Subject Design is not protected by copyright law because it is not an original work of authorship.

SIXTH AFFIRMATIVE DEFENSE

72. Plaintiff is not entitled to statutory damages or attorney's fees pursuant to 17 U.S.C. § 412.

SEVENTH AFFIRMATIVE DEFENSE

74. Defendant denies that they are responsible or liable in any way for the damages or loss alleged in the Complaint. However, if Defendant is found to be liable or responsible for any or all of the alleged damages or loss, Defendant alleges that its, if any, is not the sole proximate cause of the damage or loss, that the damage awarded to Plaintiff, if any, should be apportioned according to New York state law by each parties' respective fault and legal responsibility of all parties, persons and entities, and their agents, servants, and employees who contributed to and/or cause such damages or loss according to the proof presented at the time of trial.

NINTH AFFIRMATIVE DEFENSE

75. Plaintiff waited an unreasonable period of time before asserting its claims, if any, against Defendant, and it is barred from asserting such claims under the doctrine of laches.

TENTH AFFIRMATIVE DEFENSE

76. The damages suffered by Plaintiff, if any, were the direct and proximate result of the acts, omission, or negligence of persons or entities other than the Defendant.

**WHEREFORE**, Defendant prays for judgment as follows:

1. That Plaintiff takes nothing by the Complaint and that judgment be rendered in favor of Defendant.
2. For costs of suit, including reasonable attorneys' fees if permitted by agreement or statute; and
3. For such other and further relief as the court deems just proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Defendant hereby demands a jury trial on all issues.

Date: New York, New York  
April 3, 2008

Respectfully Submitted,  
Silverberg Stonehill Goldsmith & Haber, P.C.  
Attorneys for Defendant Kandy Kiss of  
California, Inc.

s/ Kenneth R. Schachter  
Kenneth R. Schachter (KS 8833)

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